

MASS. MS1.1:988-989 ✓

UMASS/AMHERST



312066 0367 7381 1



MASSACHUSETTS MEDIATION SERVICE



Five years of leadership in the resolution of disputes

**MEDIATION
GETS
RESULTS**

SOLUTIONS

- Fair
- Creative

DECISION MAKING

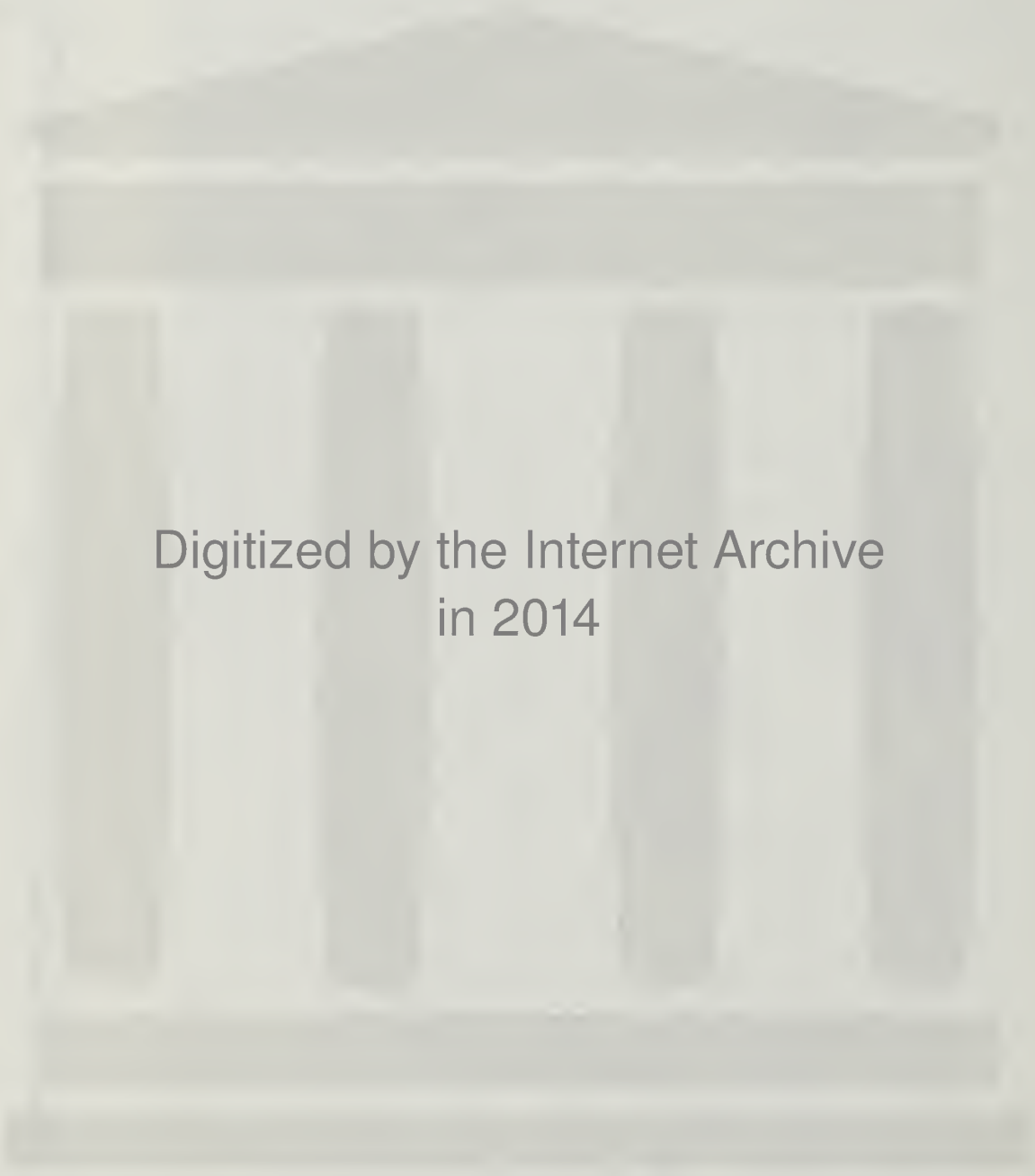
- Collaborative
- Definitive

RELATIONSHIPS

- Maintaining
- Clarifying

SAVINGS

- Time
- Money



Digitized by the Internet Archive
in 2014

https://archive.org/details/annualreport9889mass_0



Executive Director David O'Connor reviews accomplishments of the Mediation Service with Governor Dukakis.

From The Director

We are encouraged, though not surprised, to find mediation growing dramatically. Mediation improves communication, reduces uncertainty, and it expands creativity. It also saves substantial time and money. For public agencies and the courts, mediation reduces the backlog of pending cases and unhappy clients. Mediation helps the courts work more effectively. Simply put, mediation solves problems.

There is a special value to the use of mediation in the public sector. It balances the need for public review of an agreement with the need for privacy to negotiate. Mediation does not circumvent laws or rights, it invites the expression of public concern, but it also helps disputants to express their differences confidentially, and to devise constructive solutions tailored to their real interests.

The Massachusetts Mediation Service connects disputants, whether in the public or private sector, with professional mediators who excel in dispute settlement. This report highlights the Service's recent work, which includes the resolution of several important public controversies. The Service has developed new programs that successfully address entire classes of disputes. Taken together the cases and programs offer a panoramic view of mediation at its very best. We at the Mediation Service think you will agree.

David O'Connor
Executive Director

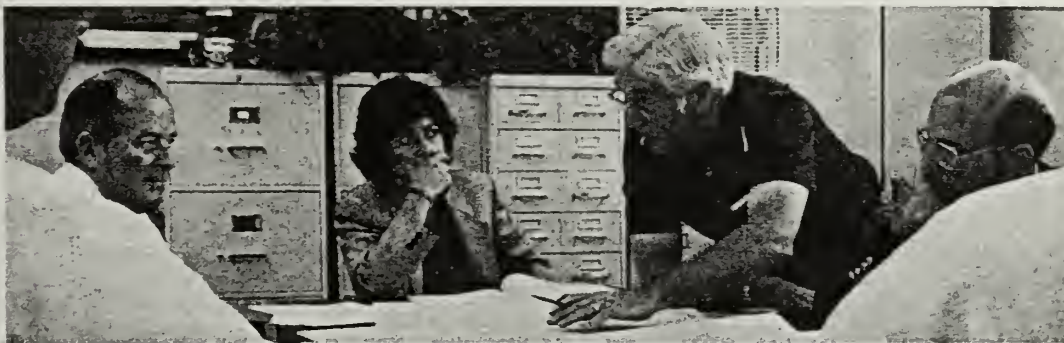
Mediation for Affordable Housing

Massachusetts, like many states, urgently needs to expand opportunities for low and moderate income persons to buy or rent their homes. To meet this need the state can give special permission to developers to deviate from local zoning requirements to build housing projects with affordable units.

Lynnfield: A developer proposed building a 34 unit project that would have 10 affordable units. Neighbors vehemently opposed the project because of occupancy density, and fear that the development would aggravate an existing flooding problem. The developer sued the Zoning Board for failure to act in a timely manner. The parties faced all the costs, delays, and uncertainty of protracted litigation.

Fortunately, a Mediation Service mediator brought the parties together, and helped to clarify misunderstandings, and reduce hostilities. The developer offered to reduce the density to 18 units and install a perimeter drainage system to address the flooding problem. The neighbors accepted this plan and the Zoning Board then approved the project.

"...finally a project all could support."



Mediator Edith Netter helps to resolve a development dispute.

Newton: A developer proposed building 20 condominium units in a densely populated neighborhood of Newton, with six units dedicated to low income owners. Neighbors vigorously objected, telling the town's Zoning Board of Appeals the project would worsen already severe density and storm water runoff problems. They claimed they could not trust the developer. Again, a Service mediator was able to get the neighbors, the developer, and the Zoning Board talking. The result was a significantly redesigned 15 unit project that dedicated one third of the units to affordable housing, a higher proportion than before. Finally, it became a project all could support.

In more than a dozen projects such as these, the Mediation Service has initiated and guided negotiations on affordable housing projects. Less than a year old, the program has grown into an important part of the multifaceted strategy used by the Executive Office of Communities and Development to increase the state's supply of low cost housing. That agency is not the only happy party. Housing developers, local zoning officials and citizens now have an effective way to resolve previously intractable disputes to their mutual satisfaction.

helping a state agency. . .

Conserving Electric Power

For years there have been major disagreements about how to provide electricity to consumers at the least cost. Utility companies argued for the construction of new power plants. Consumer and environmental groups argued that energy conservation reduces pressure on current sources, and makes power available for new uses at a much lower cost.

The state's Public Utilities Commission realized a dialogue among the partisans might help them agree on a way to change existing regulations. In effect, they hoped to create fair and energetic competition between the differing strategies. The result would be more power at the least cost, and reduced environmental impact. The Commission called on the Mediation Service to conduct a series of meetings to begin a constructive dialogue among the long time adversaries.

During each of four meetings, over 100 knowledgeable and concerned advocates debated, sometimes heatedly, the series of proposals advanced by the Commission. The Commission proposed to restructure how they would develop new, and environmentally sound, energy sources and they proposed to pursue new markets for those new energy sources. Part of the aim was to increase cooperation between previously adversarial parties.

All those who attended the sessions acclaimed them as unprecedented, innovative and effective. Commission officials expect the process will greatly improve the quality of comments offered at formal hearings. The Commission retained the Service to direct another series of meetings in the near future to carry forward the dialogue and those ground breaking regulatory reforms.



We were delighted by the Service in two ways: first, they helped us to develop new regulations, and second, they helped us think through the objectives of this office. The Service was extremely helpful and will be called on again.

Bernice McIntyre
Chairwoman
Public Utilities Commission

*"The proposals. . .
increase cooperation
between adversaries."*





Without fail the Mediation Service came up with a compromise that both sides could support.

Senator John P. Houston

*The industry
has found it
difficult to act
in a
unified way*

*building a consensus for
action . . .*

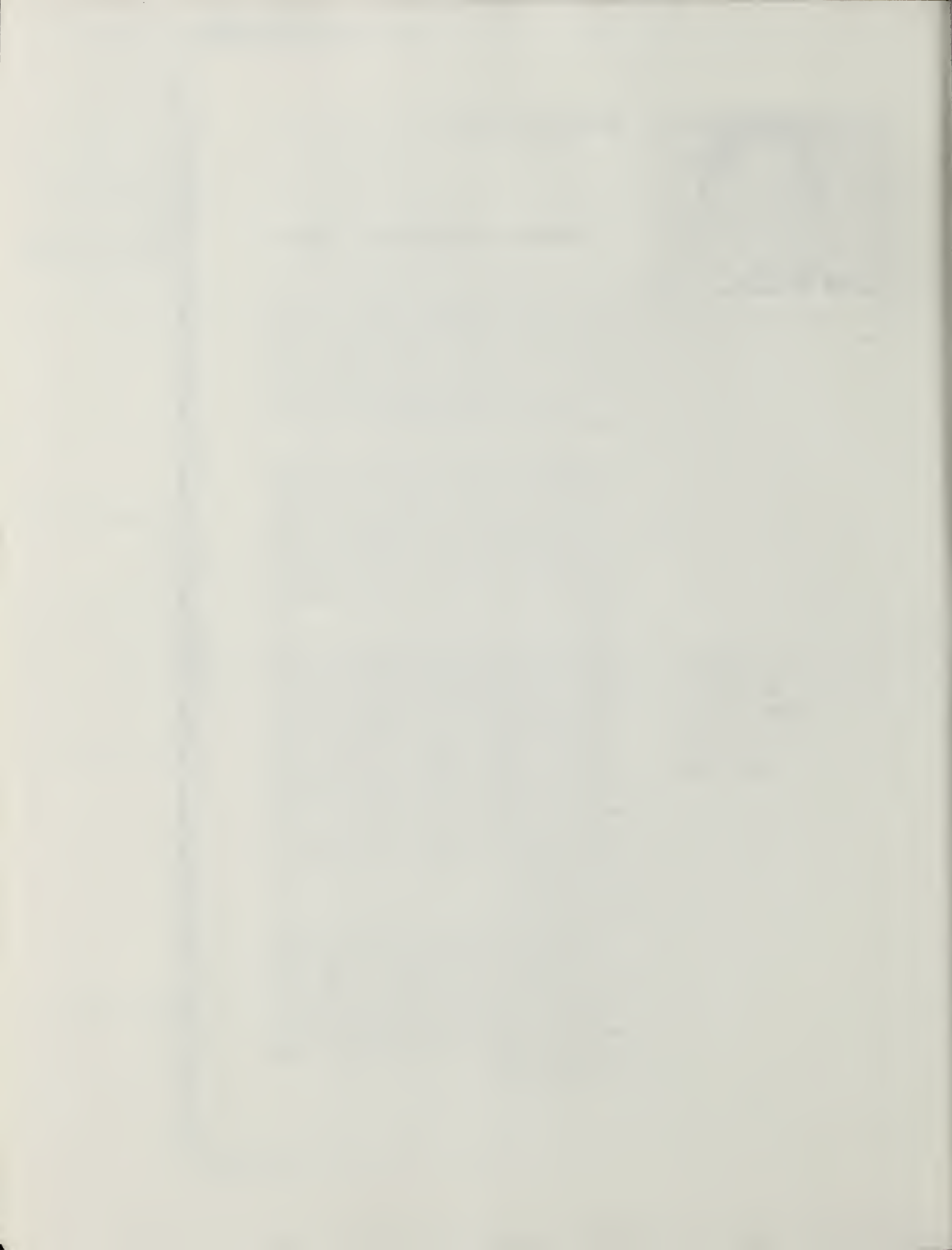
Service to Those in Need

The Commonwealth spends almost one billion dollars each year caring for its most vulnerable citizens, including abused children, recovering alcoholics, the mentally ill, substance abusers, the homeless, the unemployed, the disabled, and many others. More than 1300 private social service agencies operating under contract to the state provide care to these citizens in need.

Historically, budget cuts and contract changes have eroded the agencies' relations with the state and created explosive tensions in an industry vital to the quality of life in Massachusetts. With some 44,000 employees and a diverse membership, the industry has found it difficult to act in a unified way to advocate for its needs and address the needs of the many populations it serves.

To address these problems, the state's Office of Purchased Services recommended that providers join forces to form a single organization. The new Institute For Human Services would set standards for high quality performance, conduct seminars and training programs, and articulate a unified vision for the long range development of the human service field. Industry leaders embraced the notion but hesitated to proceed in the face of the serious conflicts that would surely arise among disparate providers. The Office encouraged them to use the Mediation Service to clarify the concerns of providers and build a consensus for action.

The Mediation Service recommended a process that would lead to incorporation of an Institute with wide spread support from provider agencies. Two day long conferences at Brandeis University allowed representatives of the 1300 companies to review and critique plans for the Institute. The result was a consensus to move ahead with the formation of an Institute that suited their needs.





My review... clearly demonstrates that mediation is a productive method of resolving disputes.

Hon. Robert L. Steadman
Chief Justice, Superior Court

Opening a New Door in the Courthouse

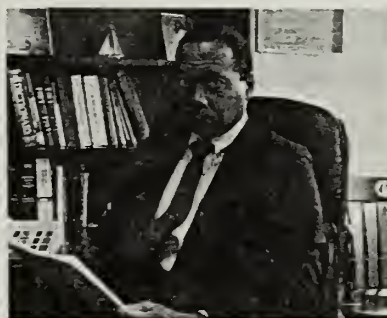
Our justice system strains under the weight of an avalanche of litigation. Since 1987 the Mediation Service, at the request of the Court, has met with some 2500 attorneys representing 1200 civil lawsuits filed in Superior Court in Boston. In over 300 cases, attorneys have voluntarily agreed to send their disputes to mediation.

Real Estate: One case involved a complex commercial real estate transaction that went sour. The original plan, calling for joint development of a collection of properties, broke down, and construction stopped short. Neither party had the funds to satisfy the other's damage claims, but, with the help of a mediator, the parties divided the properties, exchanged equity positions, dropped their lawsuits and agreed to move ahead with the proposed development.

Insurance: In another case, over a half million dollars were at stake in a lawsuit over the value of service rendered by a commercial insurance company to a public agency. The parties differed dramatically on the terms of their implied contract agreements and were far apart in their estimates of what each owed. The mediator suggested a separate meeting of their respective accountants to narrow the differences, and then persuaded the attorneys to join him in devising a formula to figure out a fair settlement. Together, they succeeded and the litigation ended.

In cases such as these, and hundreds of others, mediators meet individually and jointly with parties for up to three hours to settle disputes ranging from construction projects that are late and over budget, to disputes over goods and services promised but not delivered, and disputed claims of personal injury and property ownership. Attorneys and their clients report they are delighted with both the process and the results. An independent evaluation of the program prepared for the Court concluded that disputing parties save an average of more than \$10,000 per case, calling the program "...an effective means of settling cases otherwise bound for a lengthy and costly trial process."

*...disputing parties
save an average
of more than
\$10,000
per case.*



The Mediation Service provides a much needed safety valve for the increasing pressure on the courts.

Roscoe Trimmier, Esq.
Board of Advisors



on a quiet street in Lowell . . .



Michael Keating, mediator in the Hazardous Waste Cleanup Lowell Case.

Cleaning Up Hazardous Waste

In 1987, eight families living in recently built duplex homes on a quiet street in Lowell began to notice strange and unpleasant odors. Then they noticed light blue stains appearing in the soil after each rainfall. Alarmed, they called the state's Environmental Protection Agency.

Investigators found that, many years in the past, long before the duplexes had been built, coal gasification residues had been dumped on the property by a refuse disposal subcontractor. The 25 duplex residents voluntarily relocated to other homes at state expense while doctors studied their health, and engineers tested the soil for toxic wastes.

The state prepared to sue the gas company to clean up the site while the residents prepared to sue it for property damage and personal injury claims. Both parties, however, dreaded the prospect of a lawsuit. Litigation would divert the state's attention and funding away from much larger environmental threats. The residents might languish for years before knowing if they could purchase new homes. Their attorney asked the Mediation Service to meet with all parties and devise a settlement process all could support.

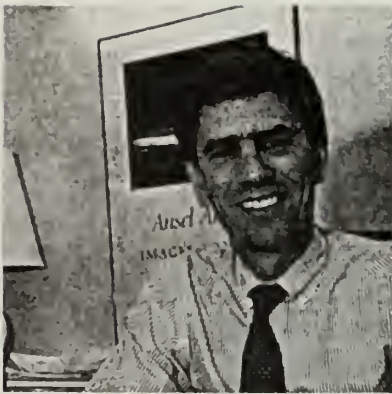
*"... gradually
an agreement
began to
take shape."*

From January to March of 1989, the parties reviewed technical studies and consultant reports. From March to May they negotiated intensively under the direction of a two person mediation team of Michael Keating and Jane Wells. Gradually an agreement began to take shape.

The agreement calls for the gas company to reimburse the state \$736,000 for its clean-up costs to date, and to pay for all future clean-up costs, which will run into millions of dollars. The company agreed to purchase the four duplexes from the owners at a fair market value, and to pay residents an additional sum. The residents and the state agreed not to sue the company and to support it in the future if it sought approval from the Department of Public Utilities for an increase in its rates to cover clean up costs.

On June 7, 1989, the families, the company and the state signed their long awaited accord. Finally, the residents could purchase new homes and get on with their lives. The residents' attorney voiced the sentiments of all participants in the dispute when he said, "Through mediation, everybody won."





Donald K. Stern
Board of Advisors



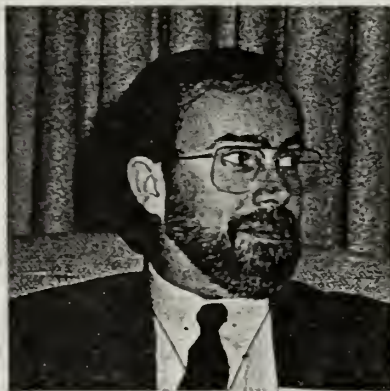
Florence R. Rubin
Board of Advisors

A Promising Future

Mediation is a remarkably versatile process. It enables those in a wide variety of conflicts to change patterns of disputing and address their most important interests.

The waste cleanup, energy conservation and human service cases we describe here illustrate how valuable mediation can be when applied to a complex, seemingly intractable public problem. The housing and civil litigation programs demonstrate how the public and private sectors benefit when traditional adjudication procedures are modified only slightly to include a voluntary mediation step.

These projects and programs highlight the continuing accomplishments of the Mediation Service. They signify, as well, a promising future.



The Mediation Service is a pioneer in managing and resolving conflict over major public issues. It helps citizens, business and government transform tough, seemingly no-win disputes into agreements that benefit everybody.

Wm. R. Drake, Vice President
National Institute of
Dispute Resolution



David L. O'Connor
Executive Director



Jane Wells
Assistant Director

Mediation Services

The Mediation Service is an agency of the Commonwealth of Massachusetts available to assist public agencies, private organizations and disputing parties. We:

- Design and operate mediation programs
- Select and supervise mediators
- Consult on strategy for the resolution of major disputes
- Train professionals in the use of mediation and negotiation skills.

These services are supported by client fees. Fee arrangements are made on a case-by-case basis. Preliminary consultation on both new programs and major cases is provided at no charge.

In addition to support from the Commonwealth, partial funding is provided by the National Institute for Dispute Resolution of Washington, D.C. and the Boston Foundation, Boston, MA. This support is gratefully acknowledged.

Massachusetts Mediation Service
Saltonstall Building
100 Cambridge St.
Boston, MA 02202
Tel. (617) 727-2224



[Faint, illegible text in the center of the page, possibly a title or header.]

[Faint, illegible text at the bottom of the page, possibly a footer or signature.]



Board of Advisors

Donald K. Stern, Chair
Governor's Legal Counsel

Florence R. Rubin, Vice Chair
President, NCCPAJ

Hon. Daniel Bosley
House of Representatives

Justice John C. Cratsley
Superior Court Department

Hon. Augusto Grace
House of Representatives

Marcia L. Greenbaum
Mediator and Arbitrator

Hon. John P. Houston
State Senate

Lawrence Susskind
Professor, MIT

Eric E. Van Loon
Endispute, Inc.

Frank E.A. Sander
Professor, Harvard Law School

Roscoe Trimmier, Esq.
Ropes & Gray

Peter M. Zuk, Esq.
Deputy Attorney General

Staff

David L. O'Connor, Executive Director
Jane H. Wells, Assistant Director

Theresa M. Kelly, Office Manager
Susan J. Robinson, Associate
Darlene E. Skog, Program Manager
Gregory B. Sobel, Environmental Program Associate



"Discourage Litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser — in fees, expenses, and waste of time."

— Abraham Lincoln

